

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Updated and Corrected Application of GREAT OAKS WATER CO. (U-162-W) for an Order Authorizing an Increase in Rates Charged for Water Service, increasing the revenue requirement by \$1,846,100 or 14.94% in 2010, by \$254,425 or 1.79% in 2011 and by \$165,822 or 1.14% in 2012.

Application 09-09-001
(Filed September 3, 2009)

(Updated and Corrected Caption
Filed 11/12/2009)

Limited Rehearing Granted
October 30, 2012
(Decision 12-10-045)

**DECISION APPROVING SETTLEMENT AGREEMENT
AND CLOSING PROCEEDING**

Summary

This decision adopts a two-party settlement agreement between Great Oaks Water Company (Great Oaks) and the Commission's Division of Ratepayer Advocates¹ of two issues under Great Oaks' 2009 general rate case Application 09-09-001 and Commission Decision (D.) 10-11-034 (resolving general rate case) and D.11-02-003 (correcting errors in D.10-11-034).

The issues in this limited rehearing are the calculation of Great Oaks' domestic production activities deduction (DPAD), and determination of the

¹ On September 26, 2013, the Division of Ratepayer Advocates (DRA) became the Office of Ratepayer Advocates through Senate Bill 96, but for consistency will continue to be referred to as DRA for this proceeding.

appropriate disallowance of Great Oaks' management salaries for time spent on unregulated activities, specifically time and expense related to litigation unrelated to Great Oaks' operations regulated by this Commission, and adjustment for services provided to affiliates, and the effect on results of operations and rates from these changes. The settlement, documented in the settlement agreement and supported by the prepared testimony and exhibits of both parties (appended here as Attachments A and B), resolves all remaining issues between the parties.

As a result of the compromise by the parties on the issues presented in this limited rehearing, the parties agreed on a DPAD of \$61,030 in test year 2010/2011, \$74,722 in escalation year 2011/2012, and \$70,685 in escalation year 2012/2013.

The parties also agreed on a disallowance of management salaries for test year 2010/2011 of 0.50% for the Chairman/CEO, resulting in a corrected authorized salary of \$330,842; of 1.15% for the Treasurer/CFO, resulting in a corrected authorized salary of \$137,366; and of 1.15% for the Regulatory Affairs Attorney, resulting in a corrected authorized salary of \$176,811. The salary for the General Counsel remained unchanged at \$209,250.

The effect on results of operations and rates resulting from the calculations on the first two issues in this limited rehearing is an increase of \$276,351, or 1.90% of the authorized revenue requirement of \$14,527,290 for test year 2013/2014. This represents a reduction of \$138,431, or 33% from Great Oaks' original request. The estimated impact of this surcharge on the average single family residential customer is an increase of \$0.75 per month, and an increase of \$7.20 per month for all other classes of customers, which are primarily business and multi-family residential customers. The proceeding is closed.

1. Background

On September 3, 2009, Great Oaks Water Company (Great Oaks) filed a general rate case in Application (A.) 09-09-001. On September 10, 2009 the Commission issued Resolution ALJ 176-3240 which categorized this proceeding as ratesetting, made the preliminary determination that hearings were required, and designated Administrative Law Judge (ALJ) Walwyn as the presiding officer. On October 7, 2009, the Division of Ratepayer Advocates (DRA) filed a protest to Great Oaks' application. An updated and corrected caption, which appears above, was filed November 12, 2009.

On January 11, 2010, this case was referred to mediation, and ALJ Regina DeAngelis was designated as the neutral ALJ. Two public participation hearings were held on January 12, 2010 in San Jose. The evidentiary hearings in this matter were held January 21-26, 2010 in the Commission's San Francisco Courtroom. Opening briefs and reply briefs were served by both parties.

On October 20, 2010, the Proposed Decision of ALJ Walwyn and the Alternate proposed decision of assigned Commissioner Bohn were mailed and made available for public comment. That case was resolved in Decision (D.) 10-11-034 when the Commission, by a unanimous vote on November 19, 2010, adopted Commissioner Bohn's alternate proposed decision.

On December 21, 2010, Great Oaks filed an application for rehearing of D.10-11-034. On October 30, 2012, the Commission issued D.12-10-045 (order granting limited rehearing and modifying D.10-11-034, and denying rehearing of the decision, as modified, as to all other issues). On February 8, 2011, the Commission issued D.11-02-003 to correct inadvertent errors in the tax and capitalized payroll calculations in D.10-11-034.

On October 25, 2012, in response to Great Oaks' application for rehearing of D.10-11-034, the Commission issued D.12-10-045 which granted a limited rehearing as discussed above, modified D.10-11-034 to correct typographical errors, removed unnecessary language, modified existing language and included additional Findings of Fact and Conclusions of Law.

On November 7, 2012, this case was reassigned to ALJ Robert A. Barnett, who held a prehearing conference on February 20, 2013. On March 1, 2013, Commissioner Michel Florio issued an Assigned Commissioner's Scoping Memo and Ruling (Scoping Memo), which preliminarily categorized the matter as ratesetting, named ALJ Barnett as the presiding officer, preliminarily determined that hearings were necessary, established a schedule for the limited rehearing, and identified the issues to be determined by Great Oaks and DRA, the two parties in the limited rehearing, as:

1. Calculate the appropriate domestic production activities deduction (DPAD);
2. Determine the appropriate disallowance for time spent on unregulated activities and adjustment for services provided to affiliates; and
3. Determine the effect on results of operations and rates from changes resulting from the calculations of issues 1 and 2.

On April 30, 2013, ALJ Dan H. Burcham was co-assigned to this case. On May 22, 2013, ALJ Burcham issued a ruling formalizing prior electronic mail rulings issued by ALJ Barnett, and granting DRA's request to modify the schedule regarding the service of DRA's prepared testimony and Great Oaks' rebuttal testimony. On June 20, 2013, ALJ Burcham issued a ruling granting Great Oaks' request for an extension of time to submit rebuttal testimony while the parties continued settlement negotiations, and establishing a hearing date of

July 18, 2013. On July 10, 2013 the parties notified ALJ Burcham they had reached a settlement on all issues, and the hearing scheduled for July 19, 2013 was cancelled.

On September 24, 2013, ALJ Burcham issued a ruling granting the joint motion of Great Oaks and DRA to admit and receive written testimony and supporting exhibits into the record. These exhibits are identified as Great Oaks Exhibits 1 through 20, and DRA Exhibits 1 through 3.2.

2. Jurisdiction

“The commission may supervise and regulate every public utility in the State and may do all things ... which are necessary and convenient in the exercise of such power and jurisdiction.”²

3. Joint Motion for Approval of Settlement Agreement

The joint motion of Great Oaks and DRA poses the issue of whether the parties have met their burden of proof that the proposed settlement should be adopted by the Commission pursuant to the applicable standard of review.

4. Standard for Reviewing Settlement Agreement

Rule 12.1(d) of the Commission’s Rules of Practice and Procedure³ provides the standard of review for approval of a settlement:

The Commission will not approve settlements, whether contested or uncontested, unless the settlement is reasonable in light of the whole record, consistent with law, and in the public interest.

² Pub. Util. Code § 701. All statutory references are to the Public Utilities Code, unless otherwise indicated.

³ Any reference to Rule or Rules are to the Commission’s Rules of Practice and Procedure, unless otherwise indicated.

5. Issues Before the Commission

The issues before the Commission are whether the settlement agreement proposed in the parties' joint motion is reasonable in light of the whole record, is consistent with the law, and is in the public interest and therefore should be approved.

The Commission concludes that that settlement fully resolves the issues between the parties, is reasonable in light of the whole record, is consistent with the law and in the public interest.

6. Discussion and Analysis of the Settlement Agreement

This settlement agreement resolves the remaining issues arising from Great Oaks' 2009 general rate case. In summary,⁴ the settling parties agree:

- Great Oaks is due additional revenue of \$276,351, to be spread over the test year 2013/2014 adopted sales forecast of 4,796,470 ccf,⁵ resulting in a surcharge of \$0.0576 per ccf. The estimated impact of this 12-month surcharge on the average single family residential customer is an increase of \$0.75 per month, and \$7.20 per month for all other classes of customers (see settlement agreement, page 4, section 3.1);
- Great Oaks' management salaries will be disallowed for test year 2010/2011 and escalation years 2011/2012 and 2012/2013 as follows: 0.50% for the Chairman/CEO, 1.15% for the Treasurer/CFO, 1.15% for the Regulatory Affairs Attorney, and the salary for the General Counsel will remain unchanged⁶;

⁴ The discussion of the settlement agreement is descriptive only, and not intended to modify or interpret the terms and conditions of the settlement agreement.

⁵ A standard measurement of liquid water is "ccf" or 100 cubic feet.

⁶ See settlement agreement, section 3.9 at 6-7.

- The DPAD will be \$61,030 in test year 2010/2011, \$74,722 in escalation year 2011/2012, and \$70,685 in escalation year 2012/2013⁷; and
- Great Oaks should be permitted to establish a balancing account to track and record the collection of surcharge revenue as credits against the under-collection account balance.
- Pursuant to Rule 12.5, approval of the settlement agreement by the Commission may not be construed as a precedent or statement of policy of any kind for or against either of the parties in any current or future proceeding.⁸
- The agreement is not severable. If the Commission fails to adopt the agreement in its entirety and without condition, the parties shall convene a settlement conference within 15 days of the Commission's action, to determine whether they can resolve any issues raised by the Commission's disposition of this agreement. If the parties cannot mutually agree to resolve all issues raised by the Commission's actions within 30 days of the settlement conference, the agreement shall be rescinded, deemed as if the parties never entered into it, and the parties shall be released from any and all obligations under the agreement.⁹

Additional provisions of the settlement agreement, including the prepared testimony and workpapers of the parties, were admitted into the record as Great Oaks Exhibits 1 through 20 and DRA Exhibits 1 through 3. The settlement agreement represents a thorough and reasoned compromise between the parties, and the overall result lies between the initial positions of the settling parties. The valid and well-documented arguments of each side are incorporated into the agreement.

⁷ See settlement agreement at 7, section 3.10

⁸ *Id.*, paragraph 1.4 at 2.

⁹ *Id.*, paragraph 1.6 at 2.

7. Conclusion

As noted above, pursuant to Rule 12.1(d), the Commission will not approve a settlement agreement unless it is reasonable in light of the whole record, consistent with the law, and in the public interest.

We have historically favored settlements that are fair and reasonable in light of the record as a whole. Concerning the record in this proceeding, the representation of facts in the settlement agreement constitutes a clear and succinct description of the pleaded facts surrounding the dispute between the parties.

The settlement agreement represents a compromise of the parties' litigation positions and resolves all issues posed in the assigned Commissioner's Scoping Memo and Ruling.¹⁰ We find that the settlement agreement reasonably resolves a potentially time-consuming dispute and that each party has made significant concessions to resolve the issues in this proceeding. It results in rates that are sufficient for Great Oaks to provide its customers with adequate, reliable service at reasonable rates, and provides for reasonable compensation for its senior management personnel.

Further, we find that nothing in the settlement agreement contravenes any statutory provisions or prior Commission decisions, and that it provides sufficient information for the Commission to discharge its future regulatory obligations with respect to the parties and their interests and obligations. The settlement agreement does not contradict current Commission rules, and it does

¹⁰ Assigned Commissioner's Scoping Memo and Ruling at 1.

not constitute a precedent regarding any principle or issue in this proceeding or any pending or future proceeding.

The settlement agreement is in the public interest because it permits Great Oaks to continue providing reliable water service to its customers at a reasonable price while receiving a reasonable rate of return, and provides for reasonable compensation for its senior management personnel.

The settlement agreement is consistent with the Commission's well-established policy of supporting resolution of disputed matters through settlement. We find that the benefits to the public outweigh any potential value of continued litigation and its associated cost.

In summary, the settlement agreement is reasonable in light of the record as a whole, consistent with the law, and in the public interest. It resolves all issues before the Commission in this proceeding. Accordingly, this decision adopts the settlement agreement.

8. Categorization and Need for Hearing

In the assigned Commissioner's Scoping Memo and Ruling issued March 1, 2013, the Commission preliminarily confirmed the categorization of the underlying application as ratesetting, and preliminarily determined that hearings were necessary in this phase of the proceeding. We affirm the categorization as ratesetting, but as the parties have reached a full and complete settlement on all matters, we find that a hearing is not necessary.

9. Comments on Proposed Decision

As the parties submitted a joint motion for adoption of the settlement agreement, it is unnecessary to submit this proposed decision adopting the settlement agreement for comment.

10. Assignment of Proceeding

Michel Peter Florio is the assigned Commissioner and Dan H. Burcham and Robert Barnett are the co-assigned ALJs in this proceeding.

Findings of Fact

1. The settlement resolves all of the issues between the two parties, Great Oaks Water Company and Division of Ratepayer Advocates (now known as the Office of Ratepayer Advocates).
2. On September 24, 2013, ALJ Burcham issued a ruling granting the joint motion of Great Oaks and DRA to admit and receive written testimony and supporting exhibits into the record. These are identified as Great Oaks Exhibits 1 through 20, and DRA Exhibits 1 through 3.
3. The overall result of the settlement lies between the initial positions of the settling parties.
4. The settling parties comprise all of the parties in the proceeding.
5. The settlement results in rates that are sufficient for Great Oaks to provide its customers with adequate reliable service at reasonable rates and provides for reasonable compensation for its senior management personnel.
6. The settlement provides the Commission with sufficient information to carry out its future regulatory obligations with respect to the parties and their interests.

Conclusions of Law

1. The settlement does not violate any statute or Commission decision or rule.
2. The settlement is reasonable in light of the whole record, consistent with the law and in the public interest.
3. Evidentiary hearings are not necessary.

4. The settlement agreement between Great Oaks and the Division of Ratepayer Advocates should be adopted.
5. The proceeding should be closed.

O R D E R

IT IS ORDERED that:

1. The joint motion of Great Oaks Water Company and the Division of Ratepayer Advocates (now known as the Office of Ratepayer Advocates) for adoption of the settlement agreement between Great Oaks Water Company and the Division of Ratepayer Advocates is granted.
2. The settlement agreement attached hereto as Attachments A and B, is approved and adopted.
3. Great Oaks Water Company is authorized to file a Tier 1 advice letter to establish a balancing account to track and record the collection of surcharge revenue as credits against the under-collection account balance.
4. Great Oaks Water Company is authorized to file a Tier 1 advice letter to incorporate a surcharge of \$0.0576 per hundred cubic feet for a period of 12 months.
5. Any remaining unresolved motions or requests are hereby denied.
6. Evidentiary hearings are not necessary.
7. Application 09-09-001 is closed.

This order is effective today.

Dated _____, at San Francisco, California.